



Case Digest

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This Case Digest includes United States Supreme Court and Wisconsin appellate decisions released/published January 1 to April 15, 2005.

UNITED STATES SUPREME COURT OPINIONS

FOURTH AMENDMENT

“USE OF A WELL-TRAINED NARCOTICS-DETECTION DOG—ONE THAT ‘DOES NOT EXPOSE NONCONTRABAND ITEMS THAT OTHERWISE WOULD REMAIN HIDDEN FROM PUBLIC VIEW,’ ... —DURING A LAWFUL TRAFFIC STOP, GENERALLY DOES NOT IMPLICATE LEGITIMATE PRIVACY INTERESTS”

Illinois v. Caballes, <http://a257.g.akamaitech.net/7/257/2422/24jan20051130/www.supremecourtus.gov/opinions/04pdf/03-923.pdf> 03-023

CATEGORICAL AUTHORITY OF POLICE TO DETAIN ANYONE ON PREMISES DURING EXECUTION OF SEARCH WARRANT PERMITS HANDCUFFING; TWO SEPARATE CONCURRENCES, ENLISTING MAJORITY OF VOTES, SUGGEST THAT THIS CONCLUSION MAY BE FACT-INTENSIVE, AND OUTLINE CONSIDERATIONS UNDER WHICH THIS AUTHORITY ATTACHES, ON CASE-BY-CASE BASIS

Muehler v. Mena, <http://a257.g.akamaitech.net/7/257/2422/22mar20051115/www.supremecourtus.gov/opinions/04pdf/03-1423.pdf> 03-1423

MERE POLICE QUESTIONING DOES NOT AMOUNT TO “SEIZURE”: “(T)HERE WAS NO ADDITIONAL SEIZURE WITHIN THE MEANING OF THE FOURTH AMENDMENT. HENCE, THE OFFICERS DID NOT NEED REASONABLE SUSPICION TO ASK MENA FOR HER NAME, DATE AND PLACE OF BIRTH, OR IMMIGRATION STATUS”

Muehler v. Mena, <http://a257.g.akamaitech.net/7/257/2422/22mar20051115/www.supremecourtus.gov/opinions/04pdf/03-1423.pdf> 03-1423

FIFTH AMENDMENT – DOUBLE JEOPARDY

DISMISSAL BY JUDGE OF ONE COUNT, AFTER CLOSE OF STATE’S CASE, ON GROUND OF INSUFFICIENT EVIDENCE WAS “FINAL” RULING FOR DOUBLE JEOPARDY PURPOSES SO AS TO PRECLUDE JUDGE FROM SUBSEQUENTLY RECONSIDERING AND SUBMITTING COUNT TO JURY

Smith v. Massachusetts, <http://a257.g.akamaitech.net/7/257/2422/22feb20051100/www.supremecourtus.gov/opinions/04pdf/03-8661.pdf> 03-8661

SIXTH AMENDMENT – SENTENCING

FEDERAL SENTENCING GUIDELINE REGIME VIOLATES 6TH AMENDMENT, TO EXTENT THAT MANDATORY ENHANCEMENT BASED ON FACTS NEITHER ADMITTED BY DEFENDANT NOR SUBJECT TO JURY-TRIAL PROOF; REMEDY IS TO MAKE GUIDELINES “EFFECTIVELY ADVISORY”

U.S. v. Booker, <http://a257.g.akamaitech.net/7/257/2422/25jan20051650/www.supremecourtus.gov/opinions/04pdf/04-104.pdf> 04-104

PROOF OF ARMED CAREER CRIMINAL ACT, 18 USC § 924(E) ENHANCEMENT “IS GENERALLY LIMITED TO EXAMINING THE STATUTORY DEFINITION, CHARGING DOCUMENT, WRITTEN PLEA AGREEMENT, TRANSCRIPT OF PLEA COLLOQUY, AND ANY EXPLICIT FACTUAL FINDING BY THE TRIAL JUDGE TO WHICH THE DEFENDANT ASSENTED”

Shepard v. U.S., <http://a257.g.akamaitech.net/7/257/2422/07mar20051115/www.supremecourtus.gov/opinions/04pdf/03-9168.pdf> 03-9168

EIGHTH AMENDMENT – CRUEL AND UNUSUAL PUNISHMENT

CRIME COMMITTED BY JUVENILE NOT SUBJECT TO DEATH PENALTY

Roper v. Simmons, <http://a257.g.akamaitech.net/7/257/2422/01mar20051300/www.supremecourtus.gov/opinions/04pdf/03-633.pdf> 03-633

FOURTEENTH AMENDMENT – EQUAL PROTECTION

RACE-BASED CLASSIFICATIONS, INCLUDING THOSE USED IN PRISON SETTING FOR SECURITY PURPOSES, ARE ALWAYS SUBJECT TO HEIGHTENED SCRUTINY

Johnson v. California, <http://a257.g.akamaitech.net/7/257/2422/23feb20051045/www.supremecourtus.gov/opinions/04pdf/03-636.pdf> 03-636

HABEAS CORPUS PROCEDURE

“MIXED” 28 U.S.C. § 2254 PETITION, RAISING UNEXHAUSTED AS WELL AS EXHAUSTED CLAIM, SUBJECT TO “STAY-AND ABEYANCE” PROCEDURE: DISTRICT COURT STAYS DECISION ON PETITION TO ALLOW LITIGANT TO RETURN TO STATE COURT ON UNEXHAUSTED CLAIM, BUT ONLY AFTER SCREENING TO DETERMINE GOOD CAUSE FOR FAILURE TO EXHAUST AND UNDERLYING ARGUABLE MERIT

Rhines v. Weber, <http://a257.g.akamaitech.net/7/257/2422/30mar20051310/www.supremecourtus.gov/opinions/04pdf/03-9046.pdf> 03-9046

DENIAL OF PAROLE ELIGIBILITY OR “SUITABILITY” MAY BE RAISED UNDER 42 U.S.C. § 1983; HABEAS IS EXCLUSIVE REMEDY ONLY WHERE HASTENED RELEASE FROM CUSTODY *NECESSARILY* FOLLOWS

Wilkinson v. Dotson, <http://a257.g.akamaitech.net/7/257/2422/07mar20051115/www.supremecourtus.gov/opinions/04pdf/03-287.pdf> 03-287

STATE COURT’S CONCLUSION, THAT INACCURACIES IN PROSECUTOR’S CLOSING ARGUMENT DID NOT MISLEAD JURY INTO BELIEVING THAT IT COULD NOT CONSIDER CERTAIN MITIGATING EVIDENCE, WAS NOT UNREASONABLE UNDER 28 U.S.C. § 2254

Brown v. Payton, <http://a257.g.akamaitech.net/7/257/2422/22mar20051115/www.supremecourtus.gov/opinions/04pdf/03-1039.pdf> 03-1039

VACATING OF CONVICTION USED TO ENHANCE CURRENTLY CHALLENGED SENTENCE IS NEW “FACTUAL PREDICATE” THAT TRIGGERS NEW LIMITATION PERIOD FOR FILING HABEAS PETITION, BUT LITIGANT MUST USE REASONABLE DILIGENCE IN ATTACKING THE EARLIER CONVICTION

Johnson v. U.S., <http://a257.g.akamaitech.net/7/257/2422/04apr20051120/www.supremecourtus.gov/opinions/04pdf/03-9685.pdf> 03-9685

WISCONSIN SUPREME COURT AND COURT OF APPEALS OPINIONS

APPELLATE PROCEDURE

COURT OF APPEALS RETAINS AUTHORITY UNDER § 809.82 TO EXTEND THE TIME FOR FILING A NOTICE OF INTENT TO PURSUE POSTCONVICTION RELIEF (*STATE v. IRAN D. EVANS*, 2004 WI 84, LIMITED TO “EXTENSIONS OF THE TIME TO FILE A *POSTCONVICTION MOTION*, WHEN THE GROUND FOR THE MOTION COULD BE CONSTRUED AS INEFFECTIVE ASSISTANCE OF *APPELLATE COUNSEL*”)

State v. Christine M. Quackenbush, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=4971> / *State v. Michael D. Lee*, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=4977> 2005 WI App 2

For Quackenbush: Tyler J. Tripp

For Lee: Thomas F. Locante, SPD, La Crosse Trial

For Amicus: Joseph N. Ehmann, SPD, Madison Appellate

INTERLOCUTORY REVIEW OF BINDOVER: MOTION TO DISMISS IS THE PROPER PROCEDURE FOR OBTAINING CIRCUIT COURT REVIEW OF A COURT COMMISSIONER’S § 757.69(1)(B) BINDOVER RULING, AS OPPOSED TO “PRELIMINARY HEARING DE NOVO” (SECOND PRELIMINARY HEARING) IN CIRCUIT COURT UNDER § 757.69(8)

State v. Eric D. Gillespie, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7581> 2001 WI App 35, *PFR* filed 2/1/05

For Gillespie: John Anthony Ward

JUDICIAL ESTOPPEL: LITIGANT IS BARRED FROM TAKING A POSITION IN APPELLATE COURT “DIRECTLY CONTRARY TO CIRCUIT COURT ARGUMENT,” ¶5 n. 4

DHHS v. Leonard M. Thorson, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7632> 2005 WI App 37

For Thorson: Carol A. Conklin

BENCH TRIAL: RELIANCE BY JUDGE ON IMPROPER CONSIDERATION—REVERSIBLE ERROR FOR JUDGE TO BASE GUILT ON WHAT SHE “KNEW FROM HER OWN EXPERIENCE RATHER THAN THE EVIDENCE AT TRIAL”

State v. Leonard A. Sarnowski, [http://www.wicourts.gov/ca/opinion/](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7371)

[DisplayDocument.html?content=html&seqNo=7371](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7371) 2005 WI App 48, (AG’s) PFR filed 3/24/05

For Sarnowski: Michael K. Gould, SPD, Milwaukee Appellate

COMMITMENTS

SEXUALLY VIOLENT PERSON—POST-COMMITMENT, DISCHARGE PETITION, § 980.09(2): EXPERT’S RECOMMENDATION OF SUPERVISED RELEASE IS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE FOR AN EVIDENTIARY HEARING ON THE PETITION, BECAUSE SUPERVISED RELEASE IS DISTINCT FROM DISCHARGE

State v. Robert M. Fowler, [http://www.wicourts.gov/ca/opinion/](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7074)

[DisplayDocument.html?content=html&seqNo=7074](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7074) 2005 WI App 41, PFR filed 3/9/05

For Fowler: Randall E. Paulson, SPD, Milwaukee Appellate

SEXUALLY VIOLENT PERSON—JURISDICTION, BASED ON JUVENILE ADJUDICATION: CONTINUOUS CUSTODY WITHIN JUVENILE SYSTEM, EVENTUATING IN SECURE PLACEMENT, ESTABLISHES CH. 980 JURISDICTION, EVEN THOUGH JUVENILE PLACEMENT IMMEDIATELY PRECEDING RELEASE FROM CUSTODY WAS *NOT* A CH.980-QUALIFYING OFFENSE

State v. Tremaine Y., [http://www.wicourts.gov/ca/opinion/](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7614)

[DisplayDocument.html?content=html&seqNo=7614](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7614) 2005 WI App 56, PFR filed 3/4/05

For Tremaine: Robert W. Peterson, Samantha Jeanne Humes, SPD, Milwaukee Trial

SEXUALLY VIOLENT PERSON—HEARING ON PETITION FOR SUPERVISED RELEASE, § 980.08(4): WHERE THE ONLY WITNESS WAS AN EXPERT WHO SUPPORTED RELEASE, AND THE EVIDENCE INDISPUTABLY SHOWED FAVORABLE RESPONSE TO TREATMENT, THE STATE FAILED TO MEET ITS BURDEN OF PROOF THAT RELEASE SHOULD *NOT* BE ALLOWED, ¶¶62-94

State v. Richard A. Brown, [http://www.courts.state.wi.us/sc/opinion/](http://www.courts.state.wi.us/sc/opinion/DisplayDocument.html?content=html&seqNo=16787)

[DisplayDocument.html?content=html&seqNo=16787](http://www.courts.state.wi.us/sc/opinion/DisplayDocument.html?content=html&seqNo=16787) 2005 WI 29, reversing 2004 WI App 33, 269

Wis. 2d 750, 767 N.W.2d 555

For Brown: Steven P. Weiss, SPD, Madison Appellate

CONFRONTATION

PRIOR TESTIMONY FROM A CODEFENDANT’S SEPARATE TRIAL IS INADMISSIBLE AT DEFENDANT’S TRIAL, WHERE THAT WITNESS WAS NO LONGER AVAILABLE TO TESTIFY, BECAUSE THE *CODEFENDANT’S* PRIOR OPPORTUNITY TO CROSS-EXAMINE WAS NOT TANTAMOUNT TO DEFENDANT’S OPPORTUNITY, “CONFRONTATION BY PROXY” BEING INSUFFICIENT TO SATISFY *CRAWFORD v. WASHINGTON*, 541 U.S. 36 (2004), ¶¶53-58; THE ERROR, HOWEVER, WAS HARMLESS, ¶¶60-77

State v. Glenn H. Hale, <http://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=16722> 2005 WI 7, 691 N.W.2d 637, *affirming, as modified*, 2003 WI App 238, 268 Wis. 2d 171, 672 N.W.2d 130
For Hale: Steven D. Phillips, SPD, Madison Appellate
(*State v. Robert Bintz*, 2002 WI App 204, 257 Wis. 2d 177, 650 N.W.2d 913 (prior testimony from codefendant’s separate preliminary hearing admissible against defendant) overruled, ¶57.)

CRIMES: OWI

PROPER TIME FOR DETERMINING THE NUMBER OF PRIOR OWI CONVICTIONS USED FOR PENALTY ENHANCEMENT, § 346.65(2), “IS AT SENTENCING, REGARDLESS OF WHETHER SOME CONVICTIONS MAY HAVE OCCURRED AFTER A DEFENDANT COMMITTED THE PRESENT OFFENSE,” ¶9

State v. Brandon J. Matke, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=6804> 2005 WI App 4, *PFR filed 1/6/05*
For Matke: James B. Connell

PRIOR OWI-REPEATER CONVICTIONS ARE PENALTY ENHANCERS, *NOTELEMENTS*, ¶¶14-15 (LANGUAGE TO CONTRARY IN *STATE v. SKIBINSKI*, 2001 WI App 109, ¶8, 244 Wis. 2d 229, 629 N.W.2d 12, WITHDRAWN)

State v. Brandon J. Matke, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=6804> 2005 WI App 4, *PFR filed 1/6/05*
For Matke: James B. Connell

PROOF OF PRIOR OWI-REPEATER PENALTY ENHANCER COMES WITHIN “PRIOR CONVICTION EXCEPTION” OF *APPRENDI v. NEW JERSEY*, 530 U.S. 466 (2000), AND IS THEREFORE SOLELY MATTER FOR SENTENCING AND NOT JURY, ¶16

State v. Brandon J. Matke, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=6804> 2005 WI App 4, *PFR filed 1/6/05*
For Matke: James B. Connell

EVIDENCE

FIELD SOBRIETY TESTS “ARE OBSERVATIONAL TOOLS, NOT LITMUS TESTS THAT SCIENTIFICALLY CORRELATE CERTAIN TYPES OR NUMBERS OF ‘CLUES’ TO VARIOUS BLOOD ALCOHOL CONCENTRATIONS,” ¶17; AND, NO SHOWING OF RELIABILITY IS REQUIRED AS A CONDITION OF ADMISSIBILITY, WISCONSIN NOT BEING A *DAUBERT* STATE, ¶¶23-24

State v. Richard B. Wilkens, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7590> 2005 WI App 36
For Wilkens: Waring R. Fincke

GUILTY PLEAS

TRIAL COURT'S OBSERVATION TO DEFENDANT, FOLLOWING DENIAL OF AN ASSERTEDLY "DISPOSITIVE" SUPPRESSION MOTION, THAT ACQUITTAL WAS "UNLIKELY;" BUT THAT "COMING FORWARD AND ADMITTING YOUR GUILT" WOULD PROVIDE "THE OPPORTUNITY TO GET SOME CREDIT," DID *NOT* AMOUNT TO JUDICIAL PARTICIPATION IN PLEA BARGAINING, OF THE TYPE BANNED BY *STATE v. COREY D. WILLIAMS*, 2003 WI APP 116, 265 WIS. 2D 229, 666 N.W.2D 58

State v. Antoine T. Hunter, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=6833> 2005 WI App 5

For Hunter: James R. Lucius

JUVENILE DELINQUENCY

BECAUSE MANDATORY SEX OFFENDER REGISTRATION FOR CERTAIN JUVENILE OFFENDERS, §§ 938.34(15m)(bm) AND 301.45(1m), IS NOT PUNISHMENT IT DOES NOT VIOLATE RIGHTS TO JURY TRIAL OR PROCEDURAL DUE PROCESS, ¶¶8-15

State v. Jeremy P., <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7296> 2005 WI App 13

For Jeremy P.: Adam B. Stephens

TRIAL COURT'S FAILURE TO EXERCISE DISCRETION TO STAY MANDATORY SEX OFFENDER REGISTRATION REQUIRES REMAND SO THAT SUCH DISCRETION MAY BE EXERCISED, ¶31, PURSUANT TO *STATE v. CESAR G.*, 2004 WI 61, ¶2, 272 Wis. 2d 22, 682 N.W.2d 1

State v. Jeremy P., <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7296> 2005 WI App 13

For Jeremy P.: Adam B. Stephens

PATERNITIES

PATERNITY COURT'S AUTHORITY TO ORDER LYING-IN EXPENSES IS CONTINGENT ON FATHER'S ABILITY TO PAY, § 767.51(3)(e); COURT LACKS AUTHORITY TO ORDER PAYMENT IN FACE OF UNDISPUTED INABILITY TO PAY, BUT MAY ENTER SUCH AN ORDER WHEN AND IF FATHER ATTAINS ABILITY TO PAY

DHHS v. Leonard M. Thorson, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7632> 2005 WI App 37

For Thorson: Carol A. Conklin

PROBATION/PAROLE/PRISON

PLRA: CERTIORARI REVIEW OF PRISON DISCIPLINE—THOUGH CIRCUIT COURT HAS AUTHORITY TO DISMISS PETITION FOR WRIT OF CERTIORARI ON BASIS OF FAILURE TO STATE CLAIM UPON WHICH RELIEF CAN BE GRANTED, IN THIS INSTANCE, CIRCUIT COURT ERRED IN DISMISSING WITHOUT FIRST ORDERING RETURN TO PETITION

State ex rel. James J. Kaufman v. Karlen, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7302> 2005 WI App 14

Pro se

REVOCAION: INMATE WHO HAS REACHED PRISON RELEASE DATE IS SUBJECT TO REVOCATION PROCEEDINGS EVEN IF HE REMAINED IN PHYSICAL CUSTODY BECAUSE HE REFUSED TO SIGN PAROLE RULES AND WAS OTHERWISE NON-COMPLIANT, ¶¶21-30; *STATE ex rel. OLSON v. LITSCHER*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425 and *STATE ex rel. WOODS v. MORGAN*, 224 Wis. 2d 534, 591 N.W.2d 922 (Ct. App. 1999) DISTINGUISHED, “BECAUSE THE INMATES IN THOSE CASES DID NOTHING TO WARRANT THEIR CONTINUED DETENTION AT THE TIME OF THEIR MANDATORY RELEASE DATE” *State ex rel. Leroy Riesch v. Schwarz*, <http://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=16776> 2005 WI 11, *affirming* summary order For Riesch: Christopher J. Cherella

REVOCAION: JURISDICTION—DOC PERMITTED UNDER § 304.072(3) TO REVOKE PAROLEE FOR CONDUCT OCCURRING DURING *PRIOR* TERM OF PAROLE SUPERVISION *DOC v. Schwarz and James Dowell*, <http://www.courts.state.wi.us/sc/opinion/DisplayDocument.html?content=html&seqNo=16800> 2005 WI 34, *reversing* 2004 WI App 136 For Dowell: Michael K. Gould, SPD, Milwaukee Appellate

PLRA: WHERE THE TRIAL COURT DETERMINES THAT THE PLRA PETITIONER HAS STATED AN ARGUABLY MERITORIOUS CLAIM FOR RELIEF, BUT LATER DISMISSES THE CLAIM AS MOOT, THE DISMISSAL DOES NOT QUALIFY AS A “STRIKE” UNDER § 801.02(7)(D) *State ex rel. Nathaniel Allen Lindell v. Litscher*, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=6887> 2005 WI App 39 Pro se

SEARCH & SEIZURE

CONSENT TO SEARCH CAR, GIVEN IMMEDIATELY AFTER CONCLUSION OF ROUTINE TRAFFIC STOP WAS, UNDER THE FACTS, THE COERCED PRODUCT OF AN ILLEGAL DETENTION (*STATE v. LAWRENCE A. WILLIAMS*, 2002 WI 94, 255 Wis. 2d 1, 646 N.W.2d 834, DISTINGUISHED) *State v. Reginald Jones*, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7094> / *Maurice E. O’Neal*, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7095> 2005 WI App 26, (*AG’s PFR filed 2/23/05*) For Jones: John P. Tedesco, SPD, Madison Appellate For O’Neal: Jess Martinez

SENTENCING

SO LONG AS SENTENCING COURT “EXPLAINED ITS RATIONALE FOR THE OVERALL SENTENCE IT IMPOSES” IT NEED NOT SPECIFICALLY RELATE ANY OF ITS ARTICULATED FACTORS TO A DECISION TO MAKE THE SENTENCE CONSECUTIVE, ¶¶17-19 *State v. Brandon J. Matke*, <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=6804> 2005 WI App 4, *PFR filed 1/6/05* For Matke: James B. Connell

The plain text of § 969.02(6) mandates that bail money be used to satisfy court costs, with no room for discretionary return to the depositor rather than payment of costs, ¶¶7-9; nor may sentence credit be used to satisfy court costs, where imposed under provisions which do not grant authority to waive or otherwise avoid their imposition, ¶¶11-13

State v. Ryan E. Baker, [http://www.wicourts.gov/ca/opinion/](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7346)

[DisplayDocument.html?content=html&seqNo=7346](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7346) 2005 WI App 45, *PFR* filed 3/17/05

For Baker: William E. Schmaal, SPD, Madison Appellate

TPR

SUBSTITUTION—TPR, § 48.29: REQUEST MAY BE MADE “EITHER BEFORE OR DURING THE PLEA HEARING”; GENERAL CIVIL SUBSTITUTION PROCEDURE, § 801.58, DOES *NOT* APPLY

Brown County DHS v. Terrance M., [http://www.wicourts.gov/ca/opinion/](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7644)

[DisplayDocument.html?content=html&seqNo=7644](http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=7644) 2005 WI App 57

For Terrance M.: Theresa J. Schmieder

DETERMINATION OF FITNESS AND SUBSTANTIVE DUE PROCESS: BECAUSE COURT ORDER SUPPORTING STATUTORY GROUND IN § 48.415(4) (ONE-YEAR ELAPSED SINCE ORDER DENYING CONTACT) FOR TERMINATION WAS BASED ON VARIOUS PROCEEDINGS WHICH REFLECTED ON THE PARENT’S FITNESS, THE TERMINATION DID NOT VIOLATE DUE PROCESS

Dane Co. DHS v. P.P., [http://www.courts.state.wi.us/sc/opinion/](http://www.courts.state.wi.us/sc/opinion/DisplayDocument.html?content=html&seqNo=16813)

[DisplayDocument.html?content=html&seqNo=16813](http://www.courts.state.wi.us/sc/opinion/DisplayDocument.html?content=html&seqNo=16813) 2005 WI 32, *affirming* unpublished decision

For P.P.: Timothy A. Provis

VICTIMS’ RIGHTS

“THE OPENING SENTENCE OF Article I, Section 9m OF THE WISCONSIN CONSTITUTION WAS MEANT TO BE A STATEMENT OF PURPOSE, SET APART FROM AND THEN FOLLOWED BY THE ENUMERATION OF THE SPECIFIC ENFORCEABLE RIGHTS CRIME VICTIMS ARE AFFORDED IN THE SECOND SENTENCE,” ¶22; THEREFORE, PROSECUTOR’S ALLEGED VIOLATION OF THIS PROVISION WAS NOT SUBJECT TO SANCTION BY VICTIMS’ RIGHTS BOARD, ¶¶13-26.

Patrick G. Schilling v. State Crime Victims Rights Board, [http://www.wicourts.gov/sc/opinion/](http://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=16797)

[DisplayDocument.html?content=html&seqNo=16797](http://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=16797) 2005 WI 17, *on certification* ■